

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

<b>MARIO GRACIA,</b>	)	
	)	
<b>Petitioner/Defendant,</b>	)	
	)	
<b>vs.</b>	)	<b>CIVIL NO. 02-CV-4135-GPM</b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	<b>CRIMINAL NO. 98-CR-40125-GPM</b>
	)	
<b>Respondent/Plaintiff.</b>	)	

**MEMORANDUM AND ORDER**

**MURPHY, Chief District Judge:**

On October 17, 2005, this Court entered final judgment and dismissed the motion to vacate, set aside, or correct sentence. (*See* Docs. 30, 31.) Petitioner filed a notice of appeal and a motion for a certificate of appealability on December 16, 2005 (*see* Docs. 32, 33).

Pursuant to 28 U.S.C. § 2253, Petitioner may not proceed on appeal without a certificate of appealability. Section 2253(c)(2) provides that a certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” Section 2253(c)(3) further provides that “[t]he certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).”

For the reasons set forth in the Court’s October 17, 2005, Memorandum and Order (*see* Doc. 30), Petitioner has not made a substantial showing of the denial of a constitutional right. The Court disagrees that an evidentiary hearing is necessary to resolve Gracia’s claim of ineffective assistance

of counsel. Accordingly, the motion for a certificate of appealability (Doc. 32) is **DENIED**.

**IT IS SO ORDERED.**

DATED: 01/17/06

s/ G. Patrick Murphy  
G. PATRICK MURPHY  
Chief United States District Judge